

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19-cr-20112-4
Hon. Matthew F. Leitman

v.

D4, DAMARIO HORNE-MCCULLOUGH,

Defendant.

ORDER DENYING DEFENDANT'S
MOTION FOR COMPASSIONATE RELEASE (ECF No. 449)

Defendant Damario Horne-McCullough is a federal prisoner in the custody of the Federal Bureau of Prisons. On February 20, 2020, Horne-McCullough pleaded guilty to one count of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §§ 924(c)(1)(A) and 924(c)(1)(A)(i) pursuant to a Rule 11 Plea Agreement. (*See* Plea Agmt., ECF No. 238.) The Court subsequently sentenced Horne-McCullough to a term of 60-months imprisonment. (*See* Judgment, ECF No. 337.) Horne-McCullough began serving that sentence in April 2021. (*See* Mot., ECF No. 449, PageID.3463.)

On February 18, 2022, through counsel, Horne-McCullough filed a motion for compassionate release from custody pursuant to 18 U.S.C. § 3582(c)(1)(A).¹ (*See id.*) Horne-McCullough moves for compassionate release based almost entirely on the risk that he says he faces from the COVID-19 virus while in custody. More specifically, Horne-McCullough says that “compelling and extraordinary” reasons justify his release because he suffers from “multiple CDC-recognized risk factors and other conditions that compound his risk of serious complications from COVID-19.” (*Id.*, PageID.3464.) Horne-McCullough further insists that “a reduction in [his] sentence would not be contrary to the factors outlined in [18 U.S.C. § 3553(a)].” (*Id.*)

The Court has carefully reviewed Horne-McCullough’s motion and declines to grant him compassionate release. As the United States Court of Appeals for the Sixth Circuit has recently, and repeatedly, recognized, “when [a prisoner] has access to the COVID-19 vaccine,” the prisoner’s potential exposure to the virus while in custody “does not present an extraordinary and compelling reason warranting” release. *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021). *See also United States v. Traylor*, 16 F.4th 485, 487 (6th Cir. 2021) (holding district court did not abuse its discretion when it denied a motion for compassionate release based on

¹ Horne-McCullough has requested that the Court hold oral argument on his motion (see Mot., ECF No. 449, PageID.3456), but the Court concludes that it may resolve the motion without a hearing. *See* E.D. Mich. Local Rule 7.1(f)(2).

prisoner's underlying health conditions where defendant had been fully vaccinated against COVID-19). Here, the COVID-19 vaccine has been made available to Horne-McCullough, and Horne-McCullough has refused to be vaccinated. (*See Mot.*, ECF No. 449, PageID.3476.) Horne-McCullough has not presented any evidence that a medical professional has advised him that the vaccine is contraindicated for him, nor has he offered any other sufficient explanation for his refusal to take the vaccine. Under these circumstances, the fact that the vaccine was available to Horne-McCullough prevents the Court from concluding that his potential exposure to COVID-19 while in custody “present[s] an extraordinary and compelling reason warranting” his release. *Lemons*, 15 F.4th at 751.

Finally, the Court concludes that the Section 3553(a) factors also weigh against releasing Horne-McCullough from custody. Horne-McCullough pleaded guilty to possessing a firearm in furtherance of a serious drug conspiracy, and he has served only a small percentage of his sentence. Indeed, Horne-McCullough has yet to complete the first year of his five-year sentence. Accordingly, releasing Horne-McCullough now would not reflect the seriousness of his offense, would not be sufficient punishment, and would undermine deterrence. In sum, the balance of the Section 3553(a) factors weigh in favor of continuing Horne-McCullough’s incarceration at this time.

Therefore, for all of the reasons explained above, Horne-McCullough's motion for compassionate release (ECF No. 449) is **DENIED**.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: February 23, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 23, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

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